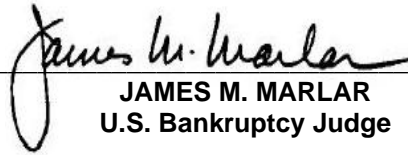


SIGNED.



Dated: October 23, 2007


JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 7
EDWARD KILE,) No. 4-04-bk-02237-JMM
Debtor.) **MEMORANDUM DECISION RE:**
) **OBJECTION TO CLAIM #8**

Before the court is the Debtor's objection to Claim #8 filed by creditor B-First, LLC / Chase Bank USA, N.A. ("B-First"). A hearing was held on October 2, 2007, at which time the court heard argument. Thereafter, the matter was taken under advisement. The objection was made by the Debtor, and not joined in by the Trustee. The case is apparently a "surplus" case, which thus gives the Debtor the legal standing to question and formally object to claims. 11 U.S.C. § 726(a)(6); 4 *Collier on Bankruptcy* ¶502.02[2][c] at 502-13 (15th ed. rev. 2006). The Debtor represented himself; the creditor was represented by Charles R. Smith.

BACKGROUND

The Debtor filed a voluntary chapter 11 case on May 6, 2004. It was converted to a chapter 7 liquidation on June 14, 2005. Thereafter, the Trustee liquidated the estate, administered most of the claims, and is now in a position to distribute a dividend to creditors.

1 In accordance with bankruptcy requirements, the Debtor filed schedules of his assets and
2 liabilities on June 21, 2004 (Dkt. #19). No debt to B-First was listed by the Debtor, nor was a consumer
3 credit card debt of \$8,210.49 (or an amount approximating that figure) listed. No amendments to the
4 schedules of unsecured creditors were filed.

5 When the case was converted from a chapter 11 reorganization to a liquidation proceeding
6 under chapter 7 on June 29, 2005, a notice was sent to creditors on the master mailing list, advising them
7 to file their claims by March 2, 2006 (Dkt. #113). Creditor B-First appeared on that mailing list (Dkt. #114),
8 having already filed a claim on August 1, 2005.

9 10 The Claim

11
12 One of the Debtor's creditors is B-First, which filed an unsecured claim for \$8,210.49 on
13 August 1, 2005 (Claim #8). B-First's claim alleged that it was owed \$8,210.49 as an unsecured credit card
14 debt. Attached to the claim was a "summary" which contained only the Debtor's name and address, last
15 payment date (9/23/01), last four digits of a social security number (0178) and the balance of \$8,210.49.
16 There was no statement, application, credit history, or other documentation supporting the claim attached
17 at that time.

18 On October 6, 2006, the Debtor filed an objection to Claim #8, in which he maintained that
19 he did not owe \$8,210.49 to B-First, but that instead he and the "Creditor have agreed upon a stated
20 amount," and urged the court to allow \$4,926 (Dkt. #173). Creditor B-First received this objection, but
21 failed to respond.

22 On December 19, 2006, the court overruled the objection, for the Debtor's failure to support
23 a lesser settlement or agreement (Dkt. #207).

24 On June 21, 2007, the Debtor again objected to Claim #8 filed by B-First (Dkt. #244). His
25 grounds this time included lack of a specific accounting and loan application. This time, there was no
26 request to limit the amount.

27 On July 5, 2007, B-First filed a response to the objection, disputing Debtor's contentions
28 (Dkt. #248).

1 Then, on July 10, 2007 (Dkt. #258), the Debtor amended his latest objection, supporting it
2 with his declaration.

3 Thereafter, on August 24, 2007, B-First filed an amended claim, for the same amount, and
4 supported by an exhibit. The exhibit was an application for a credit card, signed by the Debtor, addressed
5 to him at 1448 N. 1st Ave., Tucson, AZ. The application was dated September 2, 1995, and the Visa Gold
6 Invitation was made to First USA Bank (Amended Claim #8). The last four digits of the handwritten
7 application were 0178, and the Debtor listed his mother's maiden name as "Boeklen."

8 In the Debtor's voluntary chapter 11 petition, which he signed, the last four digits of his social
9 security number match that on the application, 0178 (Dkt. #1).

10 On October 1, 2007, B-First amended its claim again, still for the same amount. This time,
11 it included an account history, and an assignment document which indicated that it had succeeded to the
12 receivable owed by the Debtor.

13 The Debtor's latest "amended objection" details twenty-one (21) numbered reasons for his
14 belief that B-First's claim should be disallowed.

15 16 ADDRESSING THE OBJECTIONS

17
18 This court will now address each claim objection, and determine if those objections merit
19 disallowance of Claim #8.

20 21 Contention 1: Creditor has failed to respond to Debtor's request for information on its claim

22
23 The Debtor maintains that the creditor failed to supply information. However, the Debtor
24 does not indicate when, nor how, any such information was requested. His Declaration (attached to Dkt.
25 #258) does not provide a copy of any communication requesting information, nor does it indicate that he
26 actually made a specific request. It merely states that the creditor failed to provide such information. Nor
27 does the file reflect that the Debtor took advantage of the formal information requests allowed by FED. R.
28 BANK. P. 2004.

1 The objection to the B-First claim on this ground will be OVERRULED.

2
3 **Contention 2: Creditor failed to provide Debtor with a copy of his signed loan application**

4
5 The application was attached to B-First's amended claim, and thus cures the objection. It was
6 signed by the Debtor, and the Debtor has not argued that the application was not signed by him.

7 The objection to the B-First claim on this ground will be OVERRULED.

8
9 **Contention 3: Creditor failed to provide Debtor with a list of all charges made by Debtor**

10
11 This objection is more difficult to decipher, in that, in his original objection to B-First's
12 claim, the Debtor acknowledged the debt, and stated that an accord had been reached wherein the debt could
13 be reduced from \$8,210.49 to \$4,926. To now contend that he owes nothing is inconsistent with his
14 apparent claim that he never used the credit card in the first place. The Debtor must have had some factual
15 basis upon which to arrive at the attempted settlement of \$4,926. To now contend that no debt is owing is
16 inconsistent with his earlier pleading. Nor, as pointed out above, did the Debtor describe how the creditor
17 failed to respond to an inquiry, or whether an inquiry was ever made.

18 This objection will be OVERRULED.

19
20 **Contention 4: Creditor failed to provide Debtor with a list of all payments paid by Debtor to**
21 **Creditor**

22 For the reasons set forth above, this objection likewise fails, and will be OVERRULED.

23
24 **Contention 5: Creditor failed to provide Debtor with a list of all calculations for any and all interest**
25 **charges in regards to Claim No.3, filed by Creditor on July 29, 2005**

26 This objection relates to Claim #3, not this claim, which is #8. It will be OVERRULED.

27
28 **Contention 6: None (number skipped)**

1 **Contention 7: Creditor failed to provide to Debtor proof of any and all amounts due and owing to**
2 **Creditor**

3 This objection lacks merit. The creditor filed a claim, a credit history, and a Visa application.
4 To date, the Debtor has not indicated that he never received an application or credit card from First USA,
5 which application appears to have been signed by him. That is the entity which issued the card. There was
6 a later assignment of the receivable to the instant creditor, B-First, which attached a copy thereof to its latest
7 amended claim in response to the Debtor's concerns. This objection will be OVERRULED.

8
9 **Contention 8: Creditor failed to provide information regarding Debtor's outstanding sums, owing**
10 **to other creditor, which were transferred to Creditor**

11 The payment history and application are attached, as is the assignment document. The
12 balance claimed to be due is \$8,210.49. This objection will be OVERRULED.

13
14 **Contention 9: Creditor has failed to provide the date upon which Creditor was transferred Debtor's**
15 **outstanding obligations**

16 The Bill of Sale, attached to B-First's most recent amendment, indicates that the sale date was
17 July 27, 2004. This cures the objection. This objection will be OVERRULED.

18
19 **Contention 10: Creditor failed to inform Debtor of any transfer of financial obligations as required**
20 **by California Civil Code**

21 The Debtor has not specifically identified a California statute, nor indicated why California
22 law is applicable. For its inspecificity, this objection will be OVERRULED.

23
24 **Contention 11: Creditor had a duty to provide all information requested by Debtor**

25
26 The Debtor has failed to show it ever specifically requested any information from the
27 creditor. No correspondence, orders, or other communications between the parties have been attached to
28 any of the

1 Debtor's objections or pleadings. The objections themselves, if that is what the Debtor is referring to, are
2 pleadings seeking court relief, not discovery tools.

3 The Debtor has failed to show that B-First breached any "duties" to him. therefore, this
4 objection will be OVERRULED.

5
6 **Contention 12: As a Creditor and a California corporation, the Creditor must conform to California**
7 **Civil Code. Creditor is required to conform to CA CIV Code §§ 1788 - 1788.32**

8 There is nothing in the record to reflect that B-First is a California corporation, nor that it
9 is bound by the California state laws to which the Debtor refers. Indeed, this creditor's mailing address, on
10 its original and amended claims, has consistently been to an address in Seattle, Washington.

11 The Debtor has failed to show how a California statute has any bearing on this claim.
12 Therefore, the objection on this ground will be OVERRULED.

13
14 **Contention 13: Debtor denies that he ever contracted with Creditor for any sums as alleged by**
15 **Creditor**

16 This assertion lack credibility, due to Debtor's original claim objection, which noted that he
17 had made a settlement for a lesser sum, \$4,926. And, it is noteworthy that, due to the assignment of this
18 receivable, Debtor has failed to deny execution of the credit card application dated September 2, 1995
19 (attached to amended claim, filed August 24, 2007). This objection will be OVERRULED.

20
21 **Contention 14: Creditor had a duty to provide all information requested by Debtor**

22
23 This contention has been addressed above, and rejected. Objection on this ground will be
24 OVERRULED.

1 **Contention 15: Debtor contests that he has any liability to Creditor for any payment of any sum**

2
3 This argument has been addressed above, and lacks merit. Objection on this ground will be
4 OVERRULED.

5
6 **Contention 16: Although Debtor contests he owes Creditor any monies, Creditor took no action to**
7 **collect any alleged outstanding sums, prior to submitting its claim. As a result,**
8 **Creditor waived any right to collect such funds. Debtor also asserts Creditor should**
9 **be denied its claim based on Laches and Unclean Hands, Further, the Statute of**
10 **limitations lapsed, for collecting the alleged debt, prior to Creditor filing its claim**

11 This contention boils down to a statute of limitations defense. The claim and amended claims
12 filed by B-First clearly state that the "last payment date" was September 23, 2001.

13 The application, signed by the Debtor on September 2, 1995, on which the creditor bases its
14 claim, bears a Tucson, Arizona address for the Debtor, Edward B. Kile. Because said application bears no
15 choice of law provision, the court must conclude that it should adhere to Arizona law. In Arizona, the
16 statute of limitations for a written contract (here, a contract for revolving credit services) is six (6) years
17 from date of default. ARIZ. REV. STAT. § 12-548. The creditor maintains, in its Proof of Claim, that the last
18 payment (the event of default) was September 23, 2001.

19 When the Debtor filed the bankruptcy case on May 6, 2004, the delinquency was less than
20 three years old. Thus, the claim was not barred by the statute of limitations.

21 The Debtor's argument for the equitable defenses of laches and "unclean hands" are without
22 any factual support.

23 Therefore, the Debtor's objections on these grounds will be OVERRULED.

24 **Contention 17: Debtor has no knowledge that he owes Creditor any outstanding amounts that are**
25 **due or owing**

26 This objection lacks credibility due to Debtor's earlier admission, in his settlement effort
27 associated with his first objection, that he owed at least \$4,926.
28

1 This objection will be OVERRULED on estoppel and credibility grounds.

2
3 **Contention 18: Creditor's claim fails to conform to Bankruptcy Rule 3001(c); 13. [sic] When a claim**
4 **is based on a writing, the writing must be included by the Creditor when filing the**
5 **claim. See Rule 3001 (t). Creditor failed to include the writing in filing its claim**

6 The credit card application signed by the Debtor was attached to the amended claim of B-
7 First. This negates the objection. Therefore, this objection will be OVERRULED.

8
9 **Contention 19: None (number skipped)**

10 **Contention 20: Creditor has failed to provide an adequate proof of claim to Debtor and the Court**
11 **showing that its Claim is valid as shown Exhibit "B" and has failed to show a prima**
12 **facie claim**

13 The creditor has noted, with exhibits, that it holds an unpaid receivable based upon a
14 September 2, 1995, Visa credit card application executed by the Debtor in order to obtain a credit card from
15 First USA Bank.

16 The Debtor has never stated that he did not sign that application, nor that he never received
17 the card thereafter, nor that he never used it if received. The Debtor only alleges that he never applied for
18 creditor from B-First. B-First only owns the receivable now, and was not the original creditor.

19 Unless the Debtor disclaims, under oath, that he applied for credit from First USA Bank, or
20 that the application is a forgery, it is not material that B-First was not the originating creditor.

21 The court concludes that B-First filed a claim that is prima facie valid, and the Debtor has
22 failed to overcome that presumption.

23 Accordingly, the Debtor's objection on this ground will be OVERRULED.
24
25
26
27
28

1 **Contention 21: As a result of Creditor's failure to provide the requested information and show that**
2 **its Proof of Claim is valid, the Court must hold the Creditor's Claim is invalid as**
3 **Creditor has failed to prove a valid Claim**

4 This contention is actually a claim for relief, on grounds previously discussed. To the extent
5 that it is intended as a separate objection, it will be OVERRULED.

6 **CONCLUSION**

7
8 For all of the reasons outlined above, the Debtor's objection to the claim of B-First will be
9 overruled. A separate order will be entered. FED. R. BANKR. P. 9021.
10

11 DATED AND SIGNED ABOVE.
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SIGNED

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SIGNATURE